

## EXHIBIT 3

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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GORDON HEMPTON,

Plaintiff,

-against-

POND5, INC., A Delaware Corporation;  
and POND5 USER CKENNEDY342, A  
Corporation or Individual of Type  
Unknown,

Defendants.

CASE NO.: 3:15-CV-05696-DWC

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126 East 56th Street  
New York, New York

August 16, 2016  
9:10 a.m.

DEPOSITION of 30(b)(6) THOMAS CRARY - VOL. II  
before Melissa Gilmore, a Shorthand Reporter and  
Notary Public of the State of New York.

1     trying to capture.

2                   I think, in general -- yeah. If you  
3     want a gun sound, you listen for the gun sound.  
4     If you want a frog, there's the frog. You  
5     don't want to listen to a frog and a gun in the  
6     same track. You're looking for the frog, you  
7     get the frog.

8           Q.     Are there -- in your observation,  
9     does Pond5 sell and distribute compilations of  
10    content?

11                  MR. ALTENBRUN: Objection, beyond  
12    the scope.

13           A.     No.

14           Q.     So end users or customers that  
15    download content, you don't -- or Pond5 doesn't  
16    indemnify or hold harmless the end user in the  
17    event that the contributor has provided  
18    infringing content; is that right?

19                  MR. ALTENBRUN: Objection, beyond  
20    the scope.

21                  MR. ROSEN: Could you repeat that  
22    again, please?

23                  (Record read.)

24           A.     That's right, in our standard  
25    agreement. So in virtually all circumstances,

1 that's true.

2 Q. In what circumstances is that not  
3 true?

4 MR. ALTENBRUN: Objection, beyond  
5 the scope.

6 A. So this is more of a recent -- more  
7 recent product that we're working to bring to  
8 market where we would extend indemnification  
9 coverage to certain customers for a premium  
10 price.

11 Q. And is that offering currently  
12 commercially available?

13 MR. ALTENBRUN: Objection, beyond  
14 the scope.

15 A. We are beta testing, I would say.

16 Q. Just for the record, what do you  
17 mean by beta testing?

18 MR. ALTENBRUN: Objection, beyond  
19 the scope.

20 A. We are in discussions with  
21 various -- a handful of customers on such  
22 agreements.

23 Q. And are those customers large  
24 revenue customers?

25 MR. ALTENBRUN: Objection, beyond

1 Q. So two-thirds would be music,  
2 one-third would be sound effects; is that  
3 right?

4 A. Yes.

5 Q. Drawing your attention back to  
6 Exhibit 19, do you recall when you first became  
7 aware of this exchange?

8 A. Yes.

9 Q. Okay. When?

10 A. When I actually saw this e-mail, it  
11 was once we had received notice from -- of the  
12 pending litigation.

13 Q. Okay. As of the time of this e-mail  
14 exchange in late May 2015, shortly after that  
15 time, Pond5 removed the content from  
16 Ckenedy342 from the Pond5 system; is that  
17 right?

18 A. Yeah, I believe it was a month  
19 later. This is May 29th is the first page  
20 here, and I believe June 29th or June 30th, we  
21 ultimately removed the content.

22 Q. When you removed the content for  
23 Ckenedy, did you take any action with respect  
24 to customers who had downloaded Ckenedy342's  
25 content?

1           A.     Take action with regard to the  
2 customers? No.

3           Q.     And did you provide the customers  
4 any notice of any sort with respect to  
5 Ckenedy's content?

6           A.     No.

7           Q.     And did you conduct any internal  
8 review of the customers who downloaded the  
9 content that was associated with the Ckenedy  
10 file -- Ckenedy contributors?

11          A.     No.

12          Q.     And at any time since May 29, 2015,  
13 have you gone and looked and determined who it  
14 was that may have or did purchase content from  
15 CKennedy342?

16                 MR. ALTENBRUN: Object to form.

17          A.     Yeah. I mean, there's 10,000 files.  
18 So no, we haven't looked at every single file  
19 and who's downloaded them.

20          Q.     Have you looked at any files?

21          A.     No.

22          Q.     And have you conducted any  
23 investigation as to who it may be that has  
24 taken the Ckenedy files or what they might  
25 have done with them?

1 MR. ALTENBRUN: Object to form.

2 A. No.

3 Q. So you don't know whether or not,  
4 for example, Viacom could have purchased  
5 Ckennedy's content?

6 MR. ALTENBRUN: Object to form.

7 A. No.

8 Q. Let's look at Exhibit 9 from the  
9 prior deposition.

10 And this is the e-mail exchange that  
11 you had with Mr. Hempton in October 2015,  
12 correct?

13 A. Yep.

14 Q. So looking under -- on the first  
15 page, your e-mail to Mr. Hempton, you state  
16 that once you were alerted, you immediately  
17 blocked the Ckennedy content user and removed  
18 all content; is that right?

19 A. Yes.

20 Q. And at that time why did you take  
21 that step?

22 A. That's our policy is to investigate  
23 all claims of infringement.

24 Q. Okay. And you don't have a policy  
25 to take any action with respect to end users

1 suspicious content that's now been distributed  
2 out into the stream of commerce, but you've  
3 taken no action to investigate or determine  
4 whether or not -- what the scope of that  
5 distribution might be.

6 Did that concern you at any time?

7 MR. ALTENBRUN: Object to form.

8 Objection, beyond the scope.

9 A. So the question was, was I  
10 concerned -- say it again. Could you state the  
11 question again?

12 Q. Yeah. Were you concerned about the  
13 potential for broad distribution of infringing  
14 content through -- that had been uploaded by  
15 Ckenedy?

16 MR. ALTENBRUN: Objection, beyond  
17 the scope.

18 A. I was comforted by the fact that we  
19 had closed the door to any future  
20 infringements, and what had happened in the  
21 past was still subject to investigation. It  
22 still is today because we still don't know  
23 which of the files were Mr. Hempton's.

24 And upon learning that, either one  
25 of two outcomes would present themselves.



1 Either we find an amicable settlement with  
2 Mr. Hempton, so he was properly compensated for  
3 his work, which was always our objective, or we  
4 would provide notice to the -- you know, to  
5 the -- to the works and make sure that they  
6 were mitigating their own damages, since they  
7 are the ones that are at risk.

8 Q. And describe that last part. What  
9 do you mean by that?

10 A. Well, depending on, you know -- so a  
11 licensee would license it for a variety of  
12 purposes, and, in many cases, there may not be  
13 any significant risk to them, depending on  
14 where they're using that content.

15 If they're just, you know, buying it  
16 to show to their friend, they probably don't  
17 need to worry too much about, you know, the  
18 infringement claim that may come up, but if  
19 they're using it in a broad, you know,  
20 advertisement, then they probably should be  
21 more worried about that.

22 In our license agreement, as you  
23 mentioned earlier, we don't provide  
24 indemnification coverage for our customers. So  
25 it is at their risk that they're using our

1 content effectively, at least in terms of  
2 copyright claims.

3 And so, you know, we do feel we have  
4 a duty to keep our customers informed of  
5 information that comes to light, but we didn't  
6 have information that would allow us to figure  
7 out to determine which -- which claims -- which  
8 items were being infringed.

9 Q. And you were aware, were you not,  
10 that Mr. Hempton's concern was the distribution  
11 of his works outside of his control, right?

12 A. Sure. I guess, yeah. I mean, I  
13 understand where that concern comes from.

14 Q. And you're also aware that once the  
15 content is downloaded by the customer, then the  
16 copyright holder loses control of that unless  
17 there is some, you know, technical mechanism to  
18 prevent use of that?

19 MR. ALTENBRUN: Objection, beyond  
20 the scope.

21 A. Yeah. I don't know what you mean by  
22 technical mechanism, but the license is, to me,  
23 is the -- is what controls what they're able to  
24 do with it, and our license is -- it is a  
25 standard license that, you know, you would find